

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Joseph L. McDonnell, :
 : Case No. 2:13-cv-1228
 : JUDGE GEORGE C. SMITH
 Plaintiff, :
 v. : Magistrate Judge Kemp
 Commissioner of Social Security,
 Defendant. :

REPORT AND RECOMMENDATION

On December 13, 2013, the Court issued an order which addressed various issues in this case, the most pressing of which was the fact that the complaint was not signed by an attorney (or, for that matter, the plaintiff) as required by Fed.R.Civ.P. 11. As the order noted, the complaint had only a typed "signature" for attorney Robert F. Daley, and a typed signature is not actually a signature at all on a document which has not been electronically filed by the attorney. The December 13, 2013 order gave Mr. Daley five business days to submit, as appropriate, either an identical complaint with a "name handwritten" or to submit the complaint by electronic means. He was cautioned that the failure to do so might cause the Court to strike the complaint. The same order pointed out that Mr. Daley is not admitted to practice in this Court and has not moved for admission pro hac vice, and explained to him that without admission he had no authority to file documents here.

That order, which was mailed to Mr. Daley, is the last document filed in this case. Therefore, as of today's date, there is no properly-signed complaint on file, and the plaintiff is not represented by an attorney who is either permanently or provisionally authorized to practice in this Court. Under these circumstances, the only proper remedy is to strike the complaint. Once that is done, the usual course of action is to dismiss the

case without prejudice. See, e.g., Laurie v. Maxwell, 2008 WL 894408 (D. Mont. April 1, 2008); Clauson v. Town of West Springfield, 2000 WL 251740 (D. Mass. Feb. 3, 2000).

It is therefore recommended that the complaint (Doc. 3) be stricken as unsigned and that this case be dismissed without prejudice (although any effort to refile the case might be untimely). The Clerk is directed to mail a copy of this order to attorney Robert F. Daley at the address set forth on the complaint and to the Plaintiff at the address listed in section VIII of the application for leave to proceed *in forma pauperis*.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp
United States Magistrate Judge